

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2508 – SB 2536

March 12, 2018

SUMMARY OF ORIGINAL BILL: Expands the types of data considered “personal information”, as defined in Tenn. Code Ann. § 47-18-2107(a)(4)(A), in a breach of a system security. Allows an information holder to notify residents as soon as is practicable if after 45 days the information holder cannot determine if the personal information of those residents was included in a security breach. Prohibits an aggrieved customer from initiating civil action against an information holder that is an agency of this state or any of its political subdivisions.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – To the extent a civil action is brought against either the state or a local government entity, and such entity would be found liable under current law, there would be a reduction in expenditures to those governmental entities under the provisions of this legislation, that would have otherwise been litigation costs and damages paid to successful plaintiffs under current law. The extent and timing of any such reduced expenditures cannot be determined with reasonable certainty.

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (014857): Deletes all language after the enacting clause. Deletes federal employer identification number and password protected digital photographs or digital videos otherwise not available to the public as types of “personal information”. Requires an information holder that maintains computerized data that includes personal information that the information holder does not own to notify and cooperate with the owner or licensee of that information as expeditiously as practicable, but no later than 10 days following a determination of a breach of system security that affected personal information owned or licensed by another. Authorizes an information holder who is required to issue a notice disclosing a breach of system security to notify the Attorney General of the breach no later than 30 days from determination of a breach of system security, the date on which the first resident notice is sent pursuant to subsection (b), or the date on which notice is given to any other person, whichever is earlier.

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FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 47-18-2107(b), an information holder must notify any resident whose personal information is reasonably believed to have been acquired by an unauthorized person within 45 days.
- Passage of this legislation would allow an information holder to notify residents as soon as is practicable if after 45 days the information holder cannot determine if the personal information of those residents was included in a security breach.
- Pursuant to Tenn. Code Ann. § 47-18-2107(h), any customer who is aggrieved as a result of a breach of security of personal information may institute a civil action to recover damages and to enjoin other information holders from violations under this section.
- Pursuant to Tenn. Code Ann. § 47-18-2105(d), a violation of identity theft is punishable by a civil penalty the greater of: \$10,000; \$5,000 per day for each day a person's identity has been assumed; or 10 times the amount obtained or attempted to be obtained by the person using the stolen identity. This civil penalty is in addition to any other penalties established under the Tennessee Consumer Protection Act, or other laws, regulations or rules.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Court's 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. There will not be a significant increase in revenue as a result of the mandatory minimum fines for these offenses.
- This legislation may result in an increase in formal complaints; however, any such increase is estimated to be not significant.
- The Division of Consumer Affairs can handle any increase in formal complaints utilizing existing resources.
- Any impact on the court system will be not significant.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- This legislation will not significantly affect the process by which businesses in this state must notify residents that a breach of such information has occurred.
- This legislation is estimated to have no significant impact on commerce or jobs in Tennessee.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/vlh